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December 27, 2022

### Via ECF

Hon. Vincent L. Briccetti  
United States District Court for the  
Southern District of New York  
Federal Building and United States Courthouse  
300 Quarropas Street, Room 630  
White Plains, NY 10601

Re: *IBM Corp. v. Micro Focus Int'l plc*, No. 22 Civ. 9910 (S.D.N.Y.)

Dear Judge Briccetti:

Pursuant to the Court's December 15, 2022 Order, Dkt. No. 34, Plaintiff IBM Corporation ("IBM") hereby provides notice that it intends to file an amended complaint in the above-referenced action on or before January 10, 2023.

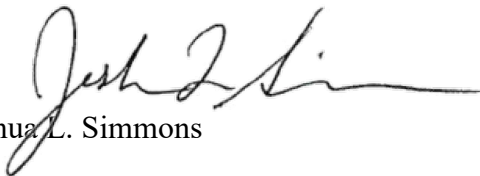
By way of background, after IBM filed its Complaint, Defendants wrote to IBM asserting that this Court lacked personal jurisdiction over Micro Focus International plc ("Micro Focus UK"). Given IBM's understanding that Micro Focus UK was actively involved in the creation and distribution of Defendants' infringing software, IBM requested that Defendants substantiate their position. Defendants did not respond, and instead filed a motion to dismiss. Rather than expend judicial and party resources on the motion, IBM intends to amend its complaint to proceed against Defendant Micro Focus (US) ("Micro Focus US"), seek discovery to identify the other Micro Focus-related entities involved in the creation and distribution of the infringing software, and amend its Complaint to add such entities as defendants.

Defendants' Rule 12(b)(6) motion to dismiss also lacks merit. Of particular note, in IBM's pre-motion correspondence with Defendants, it directed Defendants' attention to the Federal Circuit's decision in *Bowers v. Baystate Technologies, Inc.*, which held that a contract claim based on a prohibition of reverse engineering was not preempted by the Copyright Act. 320 F.3d 1317, 1325 (Fed. Cir. 2003). Tellingly, Defendants' motion does not address that decision. IBM similarly addressed Defendants' other arguments, and yet, Defendants proceeded with their motion regardless. Rather than revisit them here, IBM will address any arguments that Defendants intend to raise with regard to its amended complaint at the appropriate time.

KIRKLAND & ELLIS LLP

Hon. Vincent L. Briccetti  
December 27, 2022  
Page 2

Respectfully submitted,



Joshua L. Simmons

cc: Counsel of record (via ECF)